

48A C.J.S. Judges § 251

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

b. Bias or Prejudice

(2) Nature or Character

(a) In General

§ 251. Under federal statutes

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1)

Under federal statutes, a judge may be disqualified if the judge is biased or prejudiced.

Under a federal statute,¹ a judge must disqualify him- or herself in any proceeding in which the judge's impartiality might reasonably be questioned.² The statute requires judicial recusal if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge of the judge's bias in the case.³ The statute exists to protect the confidence of the participants and the public in the integrity of the judicial system.⁴ Recusal may be required even though the judge is not actually partial.⁵ A provision of the statute sets forth certain circumstances in which a judge must disqualify him- or herself.⁶

It is further provided by federal law that whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.⁷

The test for disqualification is an objective one.⁸ The question is whether a reasonable and informed observer would question the judge's impartiality.⁹ This is a fact-specific inquiry that should be guided by the circumstances of the specific claim.¹⁰ To

warrant recusal, an affidavit must allege facts which a reasonable person would believe would indicate a judge has a personal bias against the moving party.¹¹ The determination is not mechanical but rather a reasoned consideration of all the facts, requiring the judge to carefully weigh the policy of promoting public confidence in the judiciary against the possibility that those questioning the judge's impartiality might be seeking to avoid the adverse consequences of the judge's presiding over their case.¹²

The recusal statute is not to be construed so broadly as to require recusal based on unsubstantiated suggestions of personal bias or prejudice.¹³ A judge is not disqualified merely because a litigant sues or threatens to sue the judge.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Reasonable person standard in recusal context contemplates well-informed, thoughtful and objective observer, rather than hypersensitive, cynical, and suspicious person. 28 U.S.C.A. § 455(a). *Johnson v. Lumpkin*, 74 F.4th 334 (5th Cir. 2023).

Protracted nature of civil contempt proceedings, in which contemnor was incarcerated for civil contempt due to his failure to pay nearly \$2.5 million he owed in criminal fines and restitution while his criminal sentence for securities and wire fraud was suspended, did not justify reassignment to different district judge for further proceedings that might arise during the court's supervision of his sentence. *U.S. v. Gewin*, 759 F.3d 72 (D.C. Cir. 2014).

There are three factors to be considered in determining whether a judgment should be vacated for a violation of statute requiring any justice, judge, or magistrate to disqualify himself in any proceeding in which his impartiality might reasonably be questioned: (1) the risk of injustice to the parties in the particular case; (2) the risk that the denial of relief will produce injustice in other cases; and (3) the risk of undermining the public's confidence in the judicial process. 28 U.S.C.A. § 455(a). *CEATS, Inc. v. Continental Airlines, Inc.*, 755 F.3d 1356 (Fed. Cir. 2014).

Standard for disqualification of judicial officer is objective; question is whether objective and disinterested observer, knowing and understanding all of facts and circumstances, could reasonably question court's impartiality. 28 U.S.C.A. § 455. *U.S. v. Apple Inc.*, 992 F. Supp. 2d 263, 87 Fed. R. Serv. 3d 1163 (S.D. N.Y. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 28 U.S.C.A. § 455(a).
- 2 *U.S.—Liteky v. U.S.*, 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994); *U.S. v. Ciavarella*, 716 F.3d 705 (3d Cir. 2013), petition for cert. filed (U.S. Oct. 22, 2013).
- 3 *U.S.—Sao Paulo State of Federative Republic of Brazil v. American Tobacco Co., Inc.*, 535 U.S. 229, 122 S. Ct. 1290, 152 L. Ed. 2d 346 (2002).
- 4 *U.S.—In re Owens Corning*, 305 B.R. 175 (D. Del. 2004).

Interviews with reporters

A district judge's interviews with reporters, during which he commented about a pending antitrust action against the manufacturer of a personal computer operating system, created the appearance that he was not

acting impartially; members of the public could reasonably question whether the judge's desire for press coverage influenced his judgments.

U.S.—U.S. v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001).

5 U.S.—Patterson v. Mobil Oil Corp., 335 F.3d 476 (5th Cir. 2003).

6 28 U.S.C.A. § 455(b).

7 28 U.S.C.A. § 144.

8 U.S.—U.S. v. Oaks, 606 F.3d 530, 82 Fed. R. Evid. Serv. 894 (8th Cir. 2010); *In re Owens Corning*, 305 B.R. 175 (D. Del. 2004).

Threat against judge

When the alleged basis for recusal is a threat against the judge, the objective prong warrants recusal if a reasonable third-party observer would perceive that there is a significant risk that the judge will be influenced by the threat and resolve the case on a basis other than the merits.

U.S.—U.S. v. Spangle, 626 F.3d 488 (9th Cir. 2010).

9 U.S.—Cheney v. U.S. Dist. Court for Dist. of Columbia, 541 U.S. 913, 124 S. Ct. 1391, 158 L. Ed. 2d 225 (2004); *In re Moore*, 488 B.R. 120 (D. Haw. 2013).

"Reasonable person"

In addition to being well-informed about the surrounding facts and circumstances, for purposes of determining whether a judge's impartiality might be questioned by a reasonable observer, a "reasonable person" is a thoughtful observer rather than a hypersensitive or unduly suspicious person; a reasonable person is able to appreciate the significance of the facts in light of relevant legal standards and judicial practice and can discern whether any appearance of impropriety is merely an illusion.

U.S.—*In re Sherwin-Williams Co.*, 607 F.3d 474 (7th Cir. 2010).

10 U.S.—U.S. v. Spangle, 626 F.3d 488 (9th Cir. 2010).

11 U.S.—Ullmo ex rel. Ullmo v. Gilmour Academy, 273 F.3d 671, 159 Ed. Law Rep. 521, 2001 FED App. 0416P (6th Cir. 2001).

12 U.S.—Exxon Mobil Corporation v. United States, 110 Fed. Cl. 407 (2013).

13 U.S.—*In re Armstrong*, 294 B.R. 344 (B.A.P. 10th Cir. 2003), *aff'd*, 97 Fed. Appx. 285 (10th Cir. 2004).

14 U.S.—*In re Martin-Trigona*, 573 F. Supp. 1237 (D. Conn. 1983).